Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

TIMOTHY DECKER,

Petitioner,

v.

CARL JAMES, a single person, and NationsBank, N.A., successor by merger to Western National Bank of Tulsa,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Oklahoma, Division III

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the due process requirements set forth in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), where under Oklahoma law, prior to issuance of a tax deed, the property owner must be served with notice of application for tax deed, in the manner of a summons of a court of record, and the property owner must object or redeem within sixty days or a tax deed will issue, and the property owner received such notice by personal service and took no action, is the tax deed subsequently issued to the tax certificate holder rendered invalid because the County Treasurer's notice of the original sale of the tax certificate for taxes previously assessed and delinquent that was mailed by certified mail was returned as "unclaimed"?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Timothy Decker, petitions that a Writ of Certiorari issue to review the Opinion of the Court of Appeals of The State of Oklahoma, Division III, entered herein on July 10, 2000. In support of this Petition, Petitioner shows the Court:

OPINIONS BELOW

The opinion of the Oklahoma Court of Civil Appeals is reported at 2000 Ok. Civ. App. 126, ___ P.3d ___, and reprinted at (Pet. App. 1). The order of the Oklahoma Supreme Court denying a writ of certiorari is unreported and is reprinted at (Pet. App. 11). No Petition for Rehearing was filed or authorized. The ruling of the District Court of Tulsa County is unreported and is reprinted at (Pet. App. 5).

JURISDICTION

The decision of the Oklahoma Court of Appeals was filed on July 10, 2000. A timely petition for writ of certiorari filed with the Supreme Court of Oklahoma was denied on October 24, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> a. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

68 O.S. Supp. 1995 § 3108; 68 O.S. Supp. 1998 § 3118(A); 68 O.S. 1991 §§ 3105, 3106, 3112, 3118 and 3125-3135 are reprinted at Pet. App. 9.

STATEMENT OF THE CASE

The Oklahoma Court of Civil Appeals has decided a question of substance, not heretofore determined by the Oklahoma Supreme Court or the United States Supreme Court, concerning whether full compliance with the post November 1, 1998 notice requirements in tax sale proceedings imposed by 68 O.S. Supp. 1998 § 3118 *Right to tax deed-Estate vested-Notice to owner* ("the amendment") meets Federal due process guidelines requiring personal service, in the manner of service of summons of courts of record upon the owner of land (herein the Respondent) upon which a County Treasurer's Certificate of Tax Sale by Assignment has been issued, by the holder of the

certificate (herein the Petitioner) of a notice informing the owner that the holder has applied for a tax deed and that the certificate will be redeemed and the tax deed issued unless the owner makes redemption of the certificate within 60 days of said service.

The Oklahoma Court of Civil Appeals decided this question in a way not in accord with the applicable decisions of the Oklahoma Supreme Court or the U.S. Supreme Court. It held that, even after the adoption of the amendment and full compliance with its notice provisions and the notice provisions of the tax sale proceeding statutes, due process requirements were not satisfied because the County Treasurer's notice of the sale of the tax certificate, mailed two years earlier to the Respondent by certified mail, as required by statute, was returned "unclaimed," and the County Treasurer made no further effort to notify Respondent of the tax certificate sale. Despite uncontested facts that show the Respondent received actual notice of the commencement of the sixty day redemption period, by personal service in the manner of service of summons of courts of record, and that the Respondent chose to take no action during the sixty days provided for that purpose, the Court nevertheless held that the tax deed issued after the redemption period expired was invalid because the County Treasurer's original notice of tax certificate sale, mailed to the Respondent's residence by certified mail two years earlier, was returned as "unclaimed."

STATEMENT OF FACTS

Respondent failed to pay her real property taxes in 1995. As a result, in September of 1996, the Tulsa County Treasurer listed for sale the tax certificate representing the value of the delinquent ad valorem taxes on the property owned by Respondent in Tulsa County, Oklahoma. The treasurer caused appropriate notices to be published and mailed by certified mail, as required by 68 O.S. § 3106 (*Notice of Sale*), to her address as shown in the last tax rolls. However, the notice sent to Respondent (by certified mail) was returned to the treasurer as "unclaimed". Having fulfilled the statutory notice requirements, the treasurer made no further attempt to notify Respondent of the sale of the tax certificate. No one purchased the tax certificate at the sale, and the county purchased the certificate on October 7, 1996. More than two years passed.

On December 8, 1998, pursuant to 68 O.S. Supp. 1995 § 3108, Petitioner subsequently purchased the tax obligation from the county and received a County Treasurer's Certificate of Tax Sale by Assignment. Because Respondent still had not paid the delinquent taxes, Petitioner then filed an application for a tax deed and caused notice of his intent to redeem the certificate to be personally served on Respondent, in the manner of that of a summons in courts of record of this State, on December 10, 1998. The notice personally served on Respondent told her that Petitioner would demand a deed "unless redemption is made from said sale by you or your authorized agent or attorney on or before sixty days from service hereof" as required by 68 O.S. Supp. 1998 § 3118(A). Respondent took no action to redeem during

the sixty days provided for that purpose, and Petitioner applied for and received a tax deed.

Petitioner then filed this action, asking for a quiet title judgment against Respondent and NationsBank. Petitioner also filed a Motion for Summary Judgment. NationsBank did not respond to Petitioner's petition or motion, but Respondent filed an answer and a response to the motion in which she contended that Petitioner's deed was invalid because she did not receive proper notice of the original sale of the tax certificate. Based upon the undisputed facts recited above, the trial court granted Petitioner's motion, entering judgment in his favor quieting his title to the land in question against any and all claims of Respondent and NationsBank. Only Respondent appealed.

The Oklahoma Court of Civil Appeals held that Respondent had no constitutionally sufficient notice of the original tax certificate sale. As a result, the court decided that the County Treasurer lacked jurisdiction to sell her tax certificate at the original tax certificate sale, and the tax deed based upon that sale is void. The case was then reversed and remanded for further proceedings consistent with the Opinion. Petitioner applied for a writ of certiorari to the Oklahoma Supreme Court which was denied. No provision is made under the applicable law for a petition for rehearing.

REASONS FOR GRANTING THE WRIT

Petitioner, Timothy Decker, urges this Court to issue its Writ of Certiorari to review the decision of the Court of Appeals, for the following reasons:

I. The case law relied upon by the Court of Appeals in its opinion is clearly distinguishable from the facts and circumstances of the instant case. Regardless of the outcome, each court that has examined due process requirements relevant to the instant case has relied upon case law that speaks of *opportunity* (singular) rather than *opportunities* (plural) to present objections prior to a state action that will affect an interest in property.

II. Prior to the only occasion when the Respondent's property rights were in actual jeopardy, she received personal service of written notice, the classic form of notice always adequate in any type of proceeding.

III. The Oklahoma statutory structure provides appropriate Fourteenth Amendment due process protection of property, and the procedure it sets forth (including notice provisions) was faithfully followed by both the Tulsa County Treasurer and the Petitioner.

IV. The original sale of a tax certificate is only the sale of a claim for the value of unpaid property tax. The purchase of an original or resale tax certificate conveys no property interest afforded protection by the due process clause of the Fourteenth Amendment.

V. If the Court upholds the decision of the Court of Appeals, the Petitioner will be denied substantial rights even though the Respondent's

rights have not been abused. As a result, when a county serves notice of the sale of a tax certificate upon a property owner who is delinquent in the payment of taxes, notice by personal service of process must be provided at this preliminary stage.

ARGUMENT

I. THE CASE LAW RELIED UPON BY THE OKLAHOMA COURT OF APPEALS IN ITS OPINION IS CLEARLY DISTINGUISHABLE FROM THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE. ALL RELEVANT DECISIONS OF THIS COURT REQUIRE A SINGLE OPPORTUNITY RATHER THAN MULTIPLE OPPORTUNITIES TO PRESENT OBJECTIONS PRIOR TO A STATE ACTION THAT WILL AFFECT AN INTEREST IN PROPERTY.

The case law relied upon by the Court of Appeals in its opinion is clearly distinguishable from the facts and circumstances of the instant case. Additionally, each time this Court has examined the due process requirements relevant to this case, it has spoken of opportunity (singular) rather than opportunities (plural) to present objections prior to a state action that will affect an interest in property. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), this Court focused on the due process adequacy of a single notice (and a single opportunity to present objections).

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated,

> under all the circumstances, to apprise interested parties of the pendency of the action and afford them *an* opportunity to present their objections." (emphasis supplied).

In *Mennonite Board Of Missions v. Adams*, 462 U.S. 791 (1983) this Court stated, citing *Mullane v. Central Hanover Bank & Trust Co.* 339 U.S. 306, 314 (1950), that:

> "[P]rior to an action which will affect an interest in life, liberty or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them *an* opportunity to present their objections." (emphasis supplied.)

The Tulsa County Treasurer certainly met those requirements. Here, the certified mail notice of sale of tax certificate was mailed by the county treasurer to the (Respondent) owner of the real property as shown by the last tax rolls in his office.

Prior to the only action that actually affected Respondent's property interest (the commencement of the sixty day redemption period prior to issuance of a tax deed to the Petitioner) the Petitioner obtained actual personal service on the Respondent, at that same address, providing her with a proper "Notice of Application for Tax Deed." Attached hereto (Pet. App. 33-38) is a copy of the Notice of Application for Tax Deed and the returns of personal service thereof. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 312 (1950), this Court stated: "Personal service of written notice within the jurisdiction is the classic form of notice *always adequate in*

any type of proceeding." (emphasis supplied.) The *Mullane* Court also clearly stated that the purpose of such notice was to provide interested parties " . . . *an* opportunity to present their objections." *Id* at 314. (emphasis supplied.) Nowhere in the opinion was it asserted that *multiple* such notices or opportunities were necessary to comply with due process requirements. The Oklahoma Court of Civil Appeals erroneously held that due process requirements call for *more* than one notice and opportunity.

Although the Oklahoma Supreme Court has followed *Mennonite* and *Mullane* in the cases cited by the Court of Civil Appeals in its Opinion, the facts and circumstances of those cases are clearly distinguishable from the instant matter. A reversal of the trial court that is based upon those cases is erroneous. In its opinion, the Oklahoma Court of Civil Appeals relies upon *Luster v. Bank of Chelsea*, 730 P.2d 506, 510 (Okla. 1986), where the property owners received no notice whatsoever. The bank/mortgagee providing their mortgage escrowed money and paid the ad valorem taxes for them. The property owners subsequently changed their loan to a different bank.

> "Mrs. Thomas testified she regularly made her mortgage payments to the bank and was under the assumption the bank would handle the payment of the taxes in the same procedure as the other bank. She testified she did not receive any delinquent tax notices and was unaware the taxes were not paid until summons was served on her by the Lusters in the present lawsuit." *Luster v. Bank of Chelsea*, 730 P.2d 506, 507.

The summons referred to in that case was issued for a quiet title suit initiated by the holder of the tax deed. The

property owner (Mrs. Thomas) was never alerted to the tax delinquency, never notified of the commencement of a redemption period, and never provided an opportunity to present objections before her property interest was transferred by the tax deed.

In its decision, the Oklahoma Court of Civil Appeals also relied heavily upon *Wells Fargo v. Ziegler*, 780 P.2d 703 (Okla. 1997). In that case, only one effort was made to alert a mortgagee to pending action that would affect its property interest.

> "[T]he Tulsa County Treasurer offered the property at resale . . . and mailed notice by certified mail . . . to Wells Fargo's address as shown on the promissory note and in the Tulsa telephone directory. However, neither the notice nor a return signed receipt was returned to the Tulsa County Treasurer. *Id.* at *2.

Wells Fargo was never personally served with notice of commencement of a sixty day redemption period. Wells Fargo never received any form of notice or opportunity before its property interest was affected. The facts and circumstances of *Luster* and *Wells Fargo* are so clearly distinguishable from those of the instant case that neither provides an appropriate standard of comparison for compliance with due process requirements.

Numerous Oklahoma cases address the issue of constitutionally sufficient notice to affected parties in tax sale proceedings. In none of those cases was the property owner herself personally served notice, nor did any of those cases deal with a property owner who after receiving proper notice knowingly failed to take any action

whatsoever to present objections or to redeem her property. In the instant case, the Respondent received personal service of notice yet failed to take any action to either object or redeem. She knowingly relinquished her property rights to the Petitioner. The Petitioner acquired those property rights by purchasing a lawful investment offered by the Tulsa County Treasurer, and by diligently following the requirements set forth in both case law and Oklahoma statutes.

II. PRIOR TO THE ONLY OCCASION WHEN THE RESPONDENT'S PROPERTY RIGHTS WERE IN ACTUAL JEOPARDY, SHE RECEIVED PERSONAL SERVICE OF WRITTEN NOTICE, THE CLASSIC FORM OF NOTICE ALWAYS ADEQUATE IN ANY PROCEEDING.

The due process clause of the Fourteenth Amendment only requires that a party be given *an* opportunity to present their objections prior to an action which will affect an interest in life, liberty or property. The Oklahoma Legislature assured that opportunity when it amended 68 O.S. Supp. 1998 § 3118 to require that written notice be given to the owner of the property, served in the manner of that of summons in courts of record of this State, informing the owner that the County Treasurer's Certificate of Tax Sale by Assignment will be redeemed and the tax deed issued unless the owner makes redemption of the certificate within 60 days of said service. In this case Petitioner secured "[p]ersonal service of written notice within the jurisdiction . . . the classic form of notice always adequate in any type of proceeding . . . " upon the Respondent informing her of the impending issuance of

the tax deed unless the certificate were redeemed as required by 68 O.S. Supp. 1998 § 3118. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 312 (1950).

This notice provided Respondent an opportunity to present objections or redeem the certificate prior to an action which affected an interest in her property. After receipt of personal service of notice, the Respondent declined her opportunity through knowing and willful inaction for the sixty day redemption period prior to issuance of the tax deed. Where uncontested facts clearly establish a proper service of notice and an appropriate opportunity, Respondent's reliance on a due process defense offends traditional conceptions of fair play and substantial justice.

There is nothing in the decisions of the United States Supreme Court requiring that the Respondent have *more* than one opportunity to present her objections prior to the issuance of the tax deed or her payment of the taxes due thereon to prevent her interest in the property from being terminated. Respondent received proper notice, but chose to take no action during the sixty day opportunity provided. Protections offered by additional due process requirements may be defeated by inaction, just as the existing measures were. Sufficient safeguards are already in place to protect property owners who ignore their tax obligations. To require more will place an unreasonable burden upon local government and indirectly penalize all property owners through the increased taxes required to fund and administer those additional measures.

III. THE OKLAHOMA STATUTORY NOTICE REQUIREMENTS PROVIDE APPROPRIATE FOURTEENTH AMENDMENT DUE PROCESS PROTECTION OF PROPERTY.

The Oklahoma statutory notice requirements provide appropriate Fourteenth Amendment due process protection of property, and the procedures set forth (including notice provisions) were faithfully followed by both the Tulsa County Treasurer and the Petitioner. In regard to the sale of *tax certificates,* Title 68 Okl. St. Ann. § 3106, *Notice of Sale-Fees for publication* states in pertinent part:

> "In addition to said published notice, the county treasurer shall give notice by certified mail by mailing to the owner of said real property, as shown by the last tax rolls in his office, a notice of said sale stating the time and place of said sale and showing the legal description of the property of the owner being sold. *Failure to receive said notice shall not invalidate said sale."* (emphasis supplied).

This statutory requirement was accomplished. Respondent did not claim her certified mail. This Court stated in *Walker v. Hutchinson City,* 352 U.S. 112, 115 (1956),

> "In *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950), we gave thorough consideration to the problem of adequate notice under the Due Process Clause. That case establishes the rule that, if feasible, notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests. We there called attention to the impossibility of setting up a rigid formula as to the kind of notice that must be

> given; notice required will vary with circumstances and conditions." *Walker v. Hutchinson City*, 352 U.S. 112, 115 (1956).
>
> "The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, supra, and it must afford a reasonable time for those interested to make their appearance, *Roller v. Holly*, supra, and cf. *Goodrich v. Ferris*, 214 U.S. 71. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied. "The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals." *American Land Co. v. Zeiss*, 219 U.S. 47, 67; and see *Blinn v. Nelson*, 222 U.S. 1, 7." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Here, notice by certified mail, sent to the property owner's address as shown in the current tax roles, was reasonably calculated to inform the Respondent owner of pending proceedings.

It is also reasonable for a state to expect that all property owners should anticipate periodic correspondence from local government in regard to their property and arrange some means for receiving notices directed through normal channels of communication. This Court addressed that specific issue in *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 316:

> A state may indulge the assumption that one who has left tangible property in the state either has abandoned it, in which case proceedings against it deprive him of nothing, cf. *Anderson*

> *National Bank v. Luckett*, 321 U.S. 233; *Security Savings Bank v. California*, 263 U.S. 282, or that he has left some caretaker under a duty to let him know that it is being jeopardized. *Ballard v. Hunter*, 204 U.S. 241; *Huling v. Kaw Valley R. Co.*, 130 U.S. 559. As phrased long ago by Chief Justice Marshall in *The Mary*, 9 Cranch 126, 144, "It is the part of common prudence for all those who have any interest in [a thing], to guard that interest by persons who are in a situation to protect it."

If there is a flaw in the relevant notice provisions of the Oklahoma statutory scheme, it lies in a reliance upon that common prudence of property owners.

In *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 315, this Court focused on the means employed to serve notice, and stated:

> "The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . . "

Certified mail sent to the subject's residence certainly meets this requirement.

In regard to the *issuance of the tax deed*, Title 68 Okl. St. Ann. § 3118, *Right to tax deed-Estate vested-Notice to owner*, states in pertinent part:

> "However, before any holder of a certificate of purchase issued at any tax sale of real estate shall be entitled to a deed as provided in this section, the holder of a certificate of purchase

> shall cause a written notice signed by such holder to be served upon the owner of the land if the owner is within the state, upon the person in possession of the land, if the same be occupied, and upon all mortgagees of record of the land, which notice shall recite the sale of the lands, specifying the date of such sale and notifying such person that unless redemption is made from such sale within sixty (60) days after the date of service of such notice a tax deed will be demanded and will issue as provided by law."

The Petitioner obtained actual personal service on the Respondent, providing her with a proper "Notice of Application for Tax Deed." Attached hereto (Pet. App. 33-38) is a copy of the Notice of Application for Tax Deed and the returns of personal service thereof. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 312 (1950), this Court stated: "Personal service of written notice within the jurisdiction is the classic form of notice *always adequate in any type of proceeding.*" (emphasis supplied.) The *Mullane* Court also clearly stated that the purpose of such notice was to provide interested parties " . . . *an* opportunity to present their objections." *Id.* at 314. (emphasis supplied.) Nowhere in the opinion was it asserted that *multiple* such notices or opportunities were necessary to comply with due process requirements.

The Oklahoma Court of Civil Appeals erroneously held that due process requirements call for *more* than one notice and opportunity. The Notice Of Application For Tax Deed was personally served on the Respondent (Pet.

App. 33-38) and satisfied the requirements of due process. Respondent received written notice by personal service of process at the same property and the same address where previous notice by certified mail had gone "unclaimed."

IV. THE ORIGINAL SALE OF A TAX CERTIFICATE IS ONLY THE SALE OF A CLAIM FOR THE VALUE OF UNPAID PROPERTY TAX. THE PURCHASE OF AN ORIGINAL OR RESALE TAX CERTIFICATE CONVEYS NO PROPERTY INTEREST AFFORDED PROTECTION BY THE DUE PROCESS CLAUSE.

The Oklahoma statutory scheme clearly distinguishes between tax *certificates* and tax *deeds*, and the distinct and separate procedures applicable to each. Unfortunately, neither the Oklahoma Statutes nor the Oklahoma courts consistently apply the proper nomenclature to these very distinct and separate documents and the respective proceedings for each. Because the underlying concepts are often confused, so then are the respective procedures appropriate to each. As a result, Oklahoma courts frequently fail to distinguish between the sale of the tax *certificate* issued for the tax lien upon the property and the issuance of a tax *deed* for the property itself. This was the case with the Court of Civil Appeals of the State of Oklahoma when it reversed the decision of the trial court.

Whether it is an original tax certificate purchased by a bidder at the original sale, or a resale tax certificate subsequently re-sold by the County, a tax *certificate* conveys no property interest that requires Fourteenth Amendment due process protection. A tax certificate is

simply evidence that the holder has paid the property tax of another. The tax lien securing the certificate attached to the property prior to delinquency, by operation of law *when the taxes were assessed,* not when the certificate for delinquent taxes was subsequently sold by the County. In *Shamblin v. Beasley,* 967 P.2d 1200, at 1203, the Oklahoma Supreme Court stated, "The lien attaches *when the tax is due,* and unless redeemed, the property is subject to sale in satisfaction of the tax liability." (emphasis supplied.)

The tax liability on the property is unrelated to subsequent purchases or sales of the certificate representing that liability. The sale or resale of a tax certificate is analogous to the assignment of a note secured by a mortgage. Here, the unpaid tax bill is secured by a tax lien upon the property and that tax lien is represented by the tax certificate. Whether it is a tax certificate secured by a tax lien or a promissory note secured by a mortgage, the sale or assignment of either one merely *transfers* an existing obligation. It does not create a *new* obligation on the underlying property whenever it is sold or assigned to another party. Nor does it impact in any way upon the delinquent taxpayer's ownership interest in her property. That ownership interest was encumbered with a tax lien that attached when the taxes were assessed. See *Shamblin v. Beasley,* 967 P.2d 1200, 1203. The sale of the tax certificate simply transfers that interest in the tax lien from the county to the purchaser, or from one purchaser to another. Therefore, no property interest afforded protection by the due process clause is conveyed merely by the purchase or sale of the tax *certificate.* Additional due process protections for those transactions are redundant.

At the time it is purchased, the investment benefits of a tax certificate are certain, but any actual ownership

interest in the subject property is at best speculative. The purchaser of a tax certificate, in return for a payment equal to the amount of ad valorem taxes unpaid on a property, receives one of two possible returns on his investment. If the property owner redeems the certificate by paying her delinquent taxes, the certificate purchaser receives his original purchase price refunded plus interest.

If the property owner does not redeem the tax certificate, the certificate purchaser has the opportunity to obtain a tax deed on the subject property *only if* three subsequent conditions are met. (1) The property owner must remain delinquent in payment of her ad valorem taxes for a period of two years after the initial sale of the tax certificate. (2) At the end of the two-year period, the purchaser of the tax certificate must serve proper notice to the property owner that she has sixty days to redeem her property before a tax deed is issued to the holder of the tax certificate. (3) The property owner must choose to take no action to redeem her property in that sixty day period. In the instant case, all three conditions were met and a tax deed was issued to the certificate holder.

In truth and fact, the Respondent's property interest is never actually in jeopardy until commencement of the sixty day redemption period prior to issuance of the tax deed. Respondent offers no argument to attack the validity of notice she received at the beginning of that sixty day redemption period (opportunity). Respondent's due process defense is therefore without merit. Additional due process protections are not required for the sale of a tax certificate, because no property interest is conveyed by that transaction.

V. THE PETITIONER WILL BE DENIED SUBSTANTIAL RIGHTS EVEN THOUGH THE RESPONDENTS' RIGHTS HAVE NOT BEEN ABUSED. AS A RESULT, WHEN A COUNTY SERVES NOTICE OF THE SALE OF A TAX CERTIFICATE UPON A PROPERTY OWNER WHO IS DELINQUENT IN THE PAYMENT OF TAXES, NOTICE BY PERSONAL SERVICE MUST BE PROVIDED IN EACH CASE AT THIS PRELIMINARY STAGE.

The provisions of 68 O.S. § 3106 (*Notice of Sale*) and 68 O.S. § 3118 (*Right to tax deed-Estate vested-Notice to owner*) were drafted to provide notice that would fully comply with the Fourteenth Amendment requirements for due process protection. The Due Process Clause of the Fourteenth Amendment only requires that a party be given *an* opportunity to present their objections prior to an action which will affect an interest in life, liberty or property. The Oklahoma Legislature assured that opportunity when it amended 68 O.S. Supp. 1998 § 3118 to require that written notice be given to the owner of the property, served in the manner of that of summons in courts of record of this State, informing the owner that the County Treasurer's Certificate of Tax Sale by Assignment will be redeemed and the tax deed issued unless the owner makes redemption of the certificate within 60 days of said service.

In regard to the *issuance of the tax deed*, Title 68 Okl. St. Ann. § 3118, *Right to tax deed-Estate vested-Notice to owner*, states in pertinent part:

> "However, before any holder of a certificate of purchase issued at any tax sale of real estate shall be entitled to a deed as provided in this

> section, the holder of a certificate of purchase shall cause a written notice signed by such holder to be served upon the owner of the land if the owner is within the state, upon the person in possession of the land, if the same be occupied, and upon all mortgagees of record of the land, which notice shall recite the sale of the lands, specifying the date of such sale and notifying such person that unless redemption is made from such sale within sixty (60) days after the date of service of such notice a tax deed will be demanded and will issue as provided by law."

The Notice Of Application For Tax Deed was personally served on the Respondent (Pet. App. 33-38.) and satisfied all of these requirements. Respondent chose to take no action during the sixty days provided for redemption. Petitioner met every requirement necessary to obtain a tax deed. Respondent took no action to object or to protect her rights. If the decision of the Oklahoma Court of Civil Appeals is upheld, the Petitioner will be stripped of a property interest to provide the Respondent additional due process protections not required by *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983).

If this Court holds that Title 68 Okl. St. Ann. § 3106 *Notice of Sale-Fees for Publication* provides inadequate due process protection to property owners who fail to pay their taxes, then at this preliminary stage, notice by certified mail to the address listed in the current tax roles will hereafter be insufficient, and personal service of process must be provided instead. In regard to the sale of *tax certificates*, Title 68 Okl. St. Ann. § 3106, *Notice of Sale-Fees for publication* states in pertinent part:

> "In addition to said published notice, the county treasurer shall give notice by certified mail by mailing to the owner of said real property, as shown by the last tax rolls in his office, a notice of said sale stating the time and place of said sale and showing the legal description of the property of the owner being sold. *Failure to receive said notice shall not invalidate said sale.*" (emphasis supplied).

This statutory requirement was accomplished. Respondent did not claim her certified mail. As this Court stated in *Longyear v. Toolan*, 209 U.S. 414, 418 (1908), "The owner of property whose taxes, duly assessed, have remained unpaid for more than one year, must be held to the knowledge that proceedings for sale are liable to be begun . . . [i]f he exercises due vigilance, he cannot fail to learn of their pendency."

Personal service of process may, in some instances, provide greater assurance of actual service, but imposing this expensive and cumbersome new requirement would contradict a longstanding principle established by this Court. "The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain." *Leigh v. Green*, 193 U.S. 79, 89 (1904) (Citing *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232, 239 (1890)). Perhaps this is because taxes are predictably and regularly assessed every year. No property owner can say they are unexpected.

What is unexpected is a judicial determination that the Petitioner will be stripped of his property rights to

provide the Respondent with *more* than the single notice and opportunity required by *Mennonite*.

CONCLUSION

As the Oklahoma Supreme Court observed in *Luster v. Bank of Chelsea*, 730 P.2d 506, 510 "It is the totality of the circumstances and conditions of each individual case that determines if the constitutional requirements of due process are satisfied." *Walker v. City of Hutchinson*, 352 U.S. 112, 115, 77 S.Ct. 200, 202, 1 L.Ed.2d 178 (1956); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. at 314, 70 S.Ct. at 657. If this Court examines due process requirements "[i]n light of the peculiar facts and circumstances of this case . . . " this Court will reverse the decision of the Oklahoma Court of Civil Appeals. *Luster v. Bank of Chelsea*, 730 P.2d 506, 510.

Petitioner's request for a Writ of Certiorari to issue to review the Opinion of the Court of Appeals of the State of Oklahoma, Division III, entered herein on July 10, 2000, should be granted and the opinion of the Court of Civil Appeals reversed with the matter remanded to the District Court for further proceedings.

Dated: January 17, 2001

JOHN J. LIVINGSTON*
JON M. CARTER
2121 South Columbia, Suite 580
Tulsa, Oklahoma, 74114
(918) 742-3828

**Counsel of Record*

No. 93948
___ P.3d ___
2000 OK CIV APP 126
Decided: July 10, 2000
Filed: December 12, 2000
Mandate Issued: November 30, 2000
THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION III

TIMOTHY DECKER, Plaintiff/Appellee
v.
CAROL JAMES, Defendant/Appellant
and
NATIONS BANK, N.A., Defendant
APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY, OKLAHOMA
HONORABLE SHARRON BUBENIK, JUDGE
REVERSED AND REMANDED

John J. Livingston, Tulsa, Oklahoma, for Plaintiff/Appellee.

Terry J. Barker, Joseph C. Woltz, Robert N. LAWRENCE, PEZOLD, CARUSO, BARKER & WOLTZ, Tulsa, Oklahoma, for Defendant/Appellant.

OPINION

ADAMS, J:

¶ 1 In September of 1996, the Tulsa County Treasurer listed property owned by Carol James in Tulsa County, Oklahoma for sale for delinquent ad valorem taxes. The treasurer caused appropriate notices to be published and mailed by certified mail. However, the notice mailed to Carol James was returned to the treasurer as "unclaimed." The treasurer made no further attempts to

notify James of the tax sale. No one purchased the property at tax sale, and the county purchased the property on October 7, 1996.

¶ 2 Pursuant to 68 O.S.Supp.1995 § 3108, Timothy Decker purchased the county's interest and received a County Treasurer's Certificate of Tax Sale by Assignment on December 8, 1998. Because James had not paid the delinquent taxes, Decker then filed an application for a tax deed and caused notice to be personally served on James and Nations Bank on December 10, 1998. The notice served on James told her that Decker would demand a deed "unless redemption is made from said sale by you or your authorized agent or attorney on or before sixty days from service hereof" as required by 68 O.S.Supp.1998 § 3118(A). James did not redeem, and Decker received a tax deed.

¶ 3 Decker then filed this action, asking for a quiet title judgment against James and Nations Bank. Decker also filed a Motion for Summary Judgment. Nations Bank did not respond to Decker's petition or motion, but James filed an answer and a response to the motion in which she contended that Decker's deed was invalid because she did not receive proper notice of the original tax sale. Based upon the undisputed facts recited above, the trial court granted Decker's motion, entering judgment in his favor quieting his title to the land in question against any and all claims of James and Nations Bank. Only James appeals that judgment.

¶ 4 Relying principally on *Luster v. Bank of Chelsea*, 1986 OK 74, 730 P.2d 506, and *Wells Fargo Credit Corporation v. Ziegler*, 1989 OK 113, 780 P.2d 703, James contends the

county treasurer unconstitutionally sold the property at the original tax sale because the treasurer never properly notified her of the sale. Decker contends that any deficiency in notice of the original sale is irrelevant because James had notice of the application for tax deed which told her that she had sixty days in which to redeem her property from the tax sale.

¶ 5 In *Wells Fargo*, the Court held that certified mail notice which was returned unclaimed was constitutionally insufficient to give the county treasurer the right to conduct a tax resale which would abrogate the mortgagee's interest. In *Luster*, 1986 OK 74, ¶ 18, 730 P.2d at 510, the Court held a resale tax deed was void because the "County Treasurer *unconstitutionally exercised jurisdiction of the original sale* and resale upon which the resale tax deed was based" (emphasis added) where the treasurer had not properly mailed notice to the actual owner of the property.

¶ 6 Decker argues that neither of these cases prevent judgment in his favor because the statute governing notice of the original tax sale, 68 O.S.1991 § 3106, provides that "[f]ailure to receive [the certified mail notice] shall not invalidate said sale." *Luster* and *Wells Fargo* are based on constitutional requirements necessary to provide the owners of property due process. Legislation can not validate a sale which is constitutionally deficient.

¶ 7 However, according to Decker, James' due process rights were not implicated by the original sale because her interest in the property was not adversely affected until he applied for the tax deed. Because, according to Decker, she received valid notice of her right to redeem at

that time, any defect in notice of the original sale is cured. This argument overlooks the conclusion in *Luster* that inadequate notice prevents the county treasurer from acquiring jurisdiction to conduct the original tax sale and a further conclusion in *Luster*, 1986 OK 74, ¶ 15, 730 P.2d at 509, that the owner and mortgagee in that case "possess substantial property interests that are significantly affected by the *tax sale* and resale." (Emphasis added).

¶ 8 James had no constitutionally sufficient notice of the original tax sale. As in Luster, the County Treasurer lacked jurisdiction to sell her property for taxes, and the tax deed based upon that sale is void. The trial court's judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED

¶ 9 HANSEN, V.C.J., and JOPLIN, J., concur.

IN THE DISTRICT COURT WITHIN AND FOR
TULSA COUNTY STATE OF OKLAHOMA

TIMOTHY DECKER Plaintiff vs. CAROL JAMES, a single person, and NATIONS BANK, N.A., successor by merger to Western National Bank of Tulsa Defendants.	)	Case No. CJ 99-01478 Judge Sharron Bubenik

JUDGMENT

(Filed Oct. 18, 1999)

This action came on for hearing before the Court, Honorable Sharron Bubenik, District Judge, presiding, on Plaintiff's motion for summary judgment against the Defendant Carol James, and the issues having been heard,

Judgment is rendered in the above-styled and numbered cause as follows:

Based upon the briefs and affidavits filed in support of and in opposition to the motion, the Court finds that there is no substantial controversy as to the following facts or issues:

1. Plaintiff acquired his title to the real property described as:

> The East 300 feet of the North 360 feet of the West Half of the Northwest Quarter of the

(Northeast Quarter of the Northeast Quarter W1/2 NW1/4 NE1/4 NE1/4) of Section Twenty-Seven (27), Township Seventeen (17) North, Range Fourteen (14) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof; LESS AND EXCEPT the North 50 feet thereof ("the real property")

by virtue of the County Treasurer's Certificate Tax Deed, dated February 11, 1999, filed February 11, 1999, recorded in Book 6172, Page 1750, Tulsa County records ("the Tax Deed").

2. The following facts are uncontroverted by the Defendant:

(a) That the real property deeded was subject to taxation for the year or years stated in the deed.

(b) That the taxes were not paid at any time before the sale.

(c) That the real property deeded had not been redeemed from sale at the date of the deed.

(d) That the real property had been listed and assessed.

(e) That the taxes were levied according to law.

(f) That the real property was sold for taxes, as stated in the deed, and was duly advertised before being sold.

3. The County Treasurer of Tulsa County mailed a notice of tax sale to be held on October 7, 1996, stating the time and place of said sale and showing the legal description of the real property of the Defendant being sold, on

September 5, 1996, by certified mail to the Defendant owner of the real property as shown by the last tax rolls in his office, Carol James, a single woman. The letter was returned to the County Treasurer marked "unclaimed" on September 20, 1996.

4. The real property was sold to the County of Tulsa at the tax sale on October 7, 1996 and a County Treasurer's Certificate By Assignment was sold to the Plaintiff, Timothy Decker, on December 8, 1998.

5. No person redeemed the real property within two (2) years of the date of the tax sale, October 7, 1996, and on December 9, 1998, the Plaintiff, Timothy Decker, the holder of the County Treasurer's Certificate By Assignment caused a Notice of Application For Tax Deed signed by him as holder to be served on the owner and person in possession of the land, the Defendant Carol James, by personal service on December 10, 1998, which notice recited the sale of the lands, specified the date of such sale and notified her that "unless redemption is made from said sale within Sixty (60) days after the date of the service of such notice of tax deed will be demanded and will issue as provided by law".

6. The real property was not listed as homestead property on the last tax rolls for 1996, 1997 or 1998.

7. On February 11, 1999, the Plaintiff, Timothy Decker, demanded and obtained the Tax Deed.

8. The Defendant Nations Bank, N.A., successor by merger to Western National Bank of Tulsa, who obtained a Real Estate Mortgage With Power of Sale from Carol James, dated May 15, 1989, in the original amount of

$100,000, filed May 22, 1989, recorded in Book 5184, Page 1468, and refiled to show the marital status of Carol James on July 28, 1989, rerecorded in Book 5197, Page 1392, Tulsa County records, was properly served with summons in these proceedings on March 31, 1999, but said defendant has failed to plead or answer the petition on file herein and is in default.

Based upon the aforementioned facts to which no genuine issue exists, the Court finds that there is no substantial controversy as to any material fact and that the Plaintiff, Timothy Decker is entitled to judgment as a matter of law on Plaintiff's claims against the Defendant, Carol James, and against the defaulting Defendant Nations Bank, N.A., successor by merger to western National Bank of Tulsa.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Plaintiff, Timothy Decker, is the legal owner in fee simple, of the real property described as:

> The East 300 feet of the North 360 feet of the West Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter ($W^1/_2$ $NW^1/_4$ $NE^1/_4$ $NE^1/_4$) of Section Twenty-seven (27), Township Seventeen (17) North, Range Fourteen (14) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof; LESS AND EXCEPT the North 50 feet thereof

and that the Defendant, Carol James, a single person, and Nations Bank, N.A., successor by merger to Western Nation Bank of Tulsa, have no right, title, lien, estate

encumbrance, claim, assessment or interest, either in law or in equity, in and to the above described real property, and that the title of said Plaintiff, in and to said real property be, and it is hereby forever settled, quieted and confirmed against the Defendant, Carol James, a single person, and Nations Bank, N.A., successor by merger to Western Nation Bank of Tulsa, and each of them.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that all of the purported claims of right, title, lien, estate, encumbrance, assessment or interest, either in law or in equity, of each and all of the hereinabove named Defendants asserted against the above described real property are hereby cancelled and removed as clouds upon the Plaintiff's title thereto, and the Defendants, and each of them, are hereby perpetually enjoined and restrained from ever asserting or claiming any right, title, lien, estate, encumbrance, claim, assessment or interest thereto, adverse to the title and possession of the Plaintiff and his heirs, legatees and assigns forever.

DATED this 14 day of October 1999.

/s/ Sharron Bubenik
Judge of the District Court

APPROVED:

/s/ John J. Livingston
John J. Livingston O.B.A. #5477
2021 South Lewis, Suite 450
Tulsa, Oklahoma 74104
Telephone 918 592-1812
Fax 918 742-5054

APPROVED AS TO FORM:

/s/ Robert Lawrence
Robert Lawrence O.B.A. #18411
Pezold, Richey, Caruso & Barker
15 West 6th Street
Tulsa, OK 74119
Attorney for Defendant,
Carol James

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, October 24, 2000

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

93,948 Timothy Decker v. Carol James et al.
Petition for certiorari is denied.
CONCUR: Hargrave, V.C.J., Lavender, Opala, Kauger, Boudreau, Winchester, JJ.
DISSENT: Summers, C.J., Watt, J.
NOT VOTING: Hodges, J.

/s/ Harry Summers
CHIEF JUSTICE

28 O.S. Supp. 1995 § 3108

§ 3108. Successful purchasers – Purchase by county in event of no purchasers – Purchase of county's interest

The first person who offers to pay the full amount due on any parcel of land shall be considered to be the successful purchaser. In the event that more than one such person shall so appear at the same time the county treasurer shall decide the issue by fair and impartial drawing. Parcels of land shall be sold to prospective purchasers on a first-come, first-served basis. The county treasurer is hereby authorized at all tax sales made under the laws of this state, in case there are no other purchasers offering the amount due, to purchase all or any real estate offered at the sale for the amount of taxes, penalty, interest and costs due and unpaid thereon, in the name of the county in which the sale takes place, the county acquiring all the rights both legal and equitable that any other purchaser could acquire by reason of the purchase. Whenever the county treasurer of any county shall purchase any real estate in the name of the county, the county treasurer shall note the purchase upon the sale record and show the same in the return of sale.

If any person is desirous of purchasing the interest of the county in the real estate, the person shall have an absolute right to purchase a certificate by paying to the county treasurer the amount of all the taxes, penalties, interest and costs of sale and transfer, for the year or years so purchased, up to the date of the purchase; and thereupon the treasurer shall issue, assign and deliver to the purchaser a certificate of purchase to the real estate

which assignment and transfer shall convey to the purchaser all the rights and interest of the county as fully as if the purchaser had been the original purchaser at the tax sale. The county treasurer shall note the assignment on the tax sale record.

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68 O.S. Supp. 1998 § 3118(A)

§ 3118. Right to tax deed – Estate vested – Notice to owner

A. If no person shall redeem such lands within two (2) years, at any time after the expiration thereof, and on production of the certificate of purchase, the county treasurer of the county in which the sale of such land took place shall execute to the purchaser, or the heirs or assigns of the purchaser, a deed for land remaining unredeemed. The deed shall vest in the grantee an absolute estate in fee simple in the lands, subject however, to all claims which the state may have on the lands for taxes or other liens or encumbrances and shall extinguish the rights of any mortgagee of record of the lands to whom notice was sent as provided for by law. However, before any holder of a certificate of purchase issued at any tax sale of real estate shall be entitled to a deed as provided in this section, the holder of a certificate of purchase shall cause a written notice signed by such holder to be served upon the owner of the land if the owner is within the state, upon the person in possession of the the [sic] land, if the same be occupied, and upon all mortgagees of record of the land, which notice shall recite the sale of the

lands, specifying the date of such sale and notifying such person that unless redemption is made from such sale within sixty (60) days after the date of the service of such notice, a tax deed will be demanded and will issue as provided by law. If the real property to be sold is listed as homestead property on the last tax rolls, then in addition to all other notification requirements, the applicant shall also cause the notice of sale to be posted on the front door of the property by the county sheriff at least thirty (30) days prior to such deed being issued. The cost of the posting of the notice shall be added to the amount necessary to redeem the property from the sale.

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68 O.S. 1991 §§ 3105, 3106, 3112, 3118

§ 3105. Real property to be sold for delinquent taxes and special assessments

The county treasurer shall in all cases where taxes are a lien upon real property and are unpaid on the first day of April of any year proceed, as hereinafter provided to advertise and sell such real estate for such taxes, special assessments and costs, and shall not be bound before so doing to proceed to collect by sale all personal taxes on personal property which are by this Code made a lien on realty, but shall include such personal tax with that due on the realty, and shall sell the realty for all of said taxes and special assessments.

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§ 3106. Notice of sale – Fees for publication

The county treasurer shall give notice of the sale of real property for delinquent taxes and special assessments by publication of said sale once a week for the two (2) consecutive weeks immediately prior to the third Friday in September preceding the sale, in some newspaper in the county to be designated by the county treasurer. Such notice shall contain a notification that all lands on which the taxes are delinquent and remain due and unpaid will be sold, the time and place of the sale, a list of the lands to be sold, the name or names of the last owner or owners as reflected by the records in the office of the county treasurer, and the amount of taxes due and delinquent. Such notice shall also contain the following language: "The sale hereby advertised is conditional and subject to a two-year right of redemption by the record owner as provided in Section 24323 of Title 68 of the Oklahoma Statutes."[1] If the sale involves property upon which is located a manufactured home the notice shall also contain the following language: "The sale hereby advertised involves a manufactured home which may be subject to the right of a secured party to repossess. A holder of a perfected security interest in such manufactured home may be able to pay ad valorem taxes based upon the value of the manufactured home apart from the value of real property. If a secured party exercises this right, the holder of the tax sale certificate will be refunded the amount of taxes paid upon the value of the manufactured home." In addition to said published notice, the county treasurer shall give notice by certified

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[1] Now § 3118 of this title.

mail by mailing to the owner of said real property, as shown by the last tax rolls in his office, a notice of said sale stating the time and place of said sale and showing the legal description of the property of the owner being sold. Failure to receive said notice shall not invalidate said sale. The county treasurer shall charge and collect, in addition to the taxes, interest and penalty, the publication fees as provided by the provisions of Section 121 of Title 28 of the Oklahoma Statutes, and Five Dollars ($5.00) plus postage for mailing the notice by certified mail, which shall be paid into the county treasury, and the county shall pay the cost of the publication of such notice. But in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising and the cost of mailing.

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§ 3112. Assignment must be recorded

When any tax sale certificate which has been issued, or by the county treasurer assigned, to an individual is by such individual assigned to another person, it shall be the duty of the assignee to present such assigned certificate, or a separate written assignment duly acknowledged, to the county treasurer who shall note such assignment upon the tax sale record, and no assignment shall be valid until entered upon such record.

REVENUE AND TAXATION

§ 3118. Right to tax deed – Estate vested – Notice to owner

(a) If no person shall redeem such lands within two (2) years, at any time after the expiration thereof, and on production of the certificate of purchase, the county treasurer of the county in which the sale of such land took place shall execute to the purchaser, his heirs or assigns, a deed for land remaining unredeemed. The deed shall vest in the grantee an absolute estate in fee simple in said lands, subject however, to all claims which the state may have on said lands for taxes or other liens or encumbrances and shall extinguish the rights of any mortgagee of record of said lands to whom notice was sent as provided for by law. However, before any holder of a certificate of purchase issued at any tax sale of real estate shall be entitled to a deed as provided in this section, he shall cause a written notice signed by himself to be served upon the owner of the land if said owner is within the state, upon the person in possession of the said land (if the same be occupied), and upon all mortgagees of record of the said land, which notice shall recite the sale of the said lands, specifying the date of such sale and notifying such person that unless redemption is made from such sale within sixty (60) days after the date of the service of such notice, a tax deed will be demanded and will issue as provided by law.

(b) If it shall be made to appear by the return of the service of such notice that the owner or any mortgagee of record of such land cannot be found in the county in which such land is situated, such holder of a certificate of

purchase shall cause such notice to be mailed to the last-known address of the owner and any mortgagee of record of such land, with return receipt requested. If it shall be made to further appear by the affidavit of the holder of the tax certificate or his agent, filed in the office of the county clerk, that the owner or any mortgagee of record of the real estate are nonresidents of the state, or that the residence or place of business of such owner or any mortgagee of record is not known to the holder of such tax certificate, and cannot be ascertained by any means within the control of such holder of the tax certificate, and that the holder of such tax certificate cannot by the exercise of reasonable diligence make service upon such owner or any mortgagee of record within the state, then in such cases, service shall be made by publication for three (3) successive weeks in some newspaper of general circulation published at the county seat of the county in which such real estate is situated, and said sixty (60) days shall begin to run from the date of the first publication of such notice. Until the expiration of the said sixty (60) days, redemption may be made by any person authorized by law to redeem. All service and return shall be made in the same manner as that of summons in courts of record. The notice, with the tax sale certificate, after being duly served or published, or both, shall be returned and filed in the office of the county clerk, who shall make notation of its date and the date of service on the delinquent sale record, and the fee for such service and publication shall be the same as for like service of summons, and shall be added to the amount necessary to redeem such sales. The notice provided for in this section may be served at any time after a date not exceeding sixty (60) days prior to the

expiration of two (2) years subsequent to the day of sale. Neither failure to send notice to any mortgagee of record of said land nor failure to receive notice as provided for by this section shall invalidate the certificate tax sale, but the certificate tax sale deed shall be ineffective to extinguish any mortgage on said lands of a mortgagee to whom no notice was sent.

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§ 3125. Resale by county of unredeemed lands

If any real estate purchased by the county at delinquent tax sale shall remain unredeemed for a period of two (2) years from date of sale, and no person shall offer to purchase the same for the taxes, penalty and costs due thereon, the county treasurer shall proceed to sell such real estate at resale, which shall be held on the second Monday of June each year in each county.

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§ 3126. Advertising expense

In the event the county excise board fails, neglects or refuses to make an appropriation, or an appropriation in an amount sufficient, to pay the cost of advertising the resale for any year, the county treasurer shall proceed to advertise and hold such resale, and the cost of advertising, or any part of the cost of advertising over and above the amount appropriated by the county excise board,

shall be paid from the resale property fund, hereinafter provided.

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§ 3127. Notice of resale

The county treasurer shall give notice of the resale of such real estate by publication of said notice once a week for four (4) consecutive weeks preceding such sale, in some newspaper, having been continuously published one hundred four (104) consecutive weeks with admission to the United States mails as second class mail matter, with paid circulation and published in the county where delivered to the mails, to be designated by the county treasurer; and if there be no paper published in the county, or publication is refused, he shall give notice by written or printed notice posted on the door of the courthouse. Such notice shall contain a description of the real estate to be sold, the name of the owner of said real estate as shown by the last tax rolls in the office of the county treasurer, the time and place of sale, a statement of the date on which said real estate was sold to the county for delinquent taxes, the year or years for which taxes have been assessed but remain unpaid and a statement that the same has not been redeemed for the period of two (2) years from the date of sale, the total amount of all delinquent taxes, costs, penalties and interest accrued, due and unpaid on the same, and a statement that such real estate will be sold to the highest bidder for cash. It shall not be necessary to set forth the amount of taxes, penalties, interest and costs accrued each year separately,

but it shall be sufficient to publish the total amount of all due and unpaid taxes, penalties, interest and costs. The county treasurer shall, at least thirty (30) days prior to such resale of real estate, give notice by certified mail, by mailing to the owner of said real estate, as shown by the last tax rolls in his office, and to all mortgagees of record of said real estate a notice stating the time and place of said resale and showing the legal description of the real property to be sold. If the county treasurer does not know and cannot, by the exercise of reasonable diligence, ascertain the address of any mortgagee of record, then the county treasurer shall cause an affidavit to be filed with the county clerk, on a form approved by the State Auditor and Inspector, stating such fact, which affidavit shall suffice, along with publication as provided for by this section, to give any mortgagee of record notice of such resale. Neither failure to send notice to any mortgagee of record of said real estate nor failure to receive notice as provided for by this section shall invalidate the resale, but the resale tax deed shall be ineffective to extinguish any mortgage on said real estate of a mortgagee to whom no notice was sent. Beginning on the effective date of this act, no encumbrancer of real property in this state shall be permitted to file any instrument purporting to encumber real property in any county of the state with any county clerk unless the instrument states with any county clerk unless the instrument states on its face the mailing address of such encumbrancer.

§ 3128. Publication costs on resale, rate

For publication costs on resale of real estate, and for publishing lists of lands upon which taxes are delinquent, the county treasurer shall charge and collect from the purchaser at such sale, and the publisher shall be paid, as full compensation for publishing said resale list in four regular issues, and for publishing lists of land upon which taxes are delinquent in three regular issues, in some newspaper within the county having been continuously published one hundred four (104) consecutive weeks with admission to the United States mails as second-class mail matter:

The publication fees, as provided by Title 28, O.S.1961, § 121, or as same may hereafter be amended.

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§ 3129. Sale – Property bid off in name of County – County's liability to other taxing districts

(a) On the day said real estate is advertised for resale, the county treasurer shall offer same for sale at his office between the hours of nine o'clock a.m. and four o'clock p.m. and continue said sale thereafter from day to day between such hours until all of said real estate is sold. Said real estate shall be sold at public auction to the highest bidder for cash.

(b) All property must be sold for a sum not less than two-thirds of the assessed value of such real estate as fixed for the current fiscal year, or for the total amount

of taxes, penalties, interest and costs due on such property, whichever is the lesser; and if there is no bid equal to or greater than the sum so required, the county treasurer shall bid off the same in the name of the county. All property bid off in the name of the county shall be for the amount of all taxes, penalties, interest and costs due thereon, and the county treasurer shall issue a deed therefor to the board of county commissioners for the use and benefit of the county.

(c) The county shall not be liable to the state or any taxing district thereof for any part of the amount for which any property may be sold to such county. All property bid off in the name of the county shall be exempt from ad valorem taxation as long as title is held for the county.

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§ 3130. Monies received at resale deemed collection of tax – Credit and apportionment

Monies received by the county treasurer at resale from individual purchasers, not redemptioners, shall nevertheless be deemed to be collections of tax, and if no redemption be had before issuance and delivery of a deed therefor, the tax monies so collected, not including excess proceeds to be held for the owner thereof, shall be credited and apportioned as such taxes would have been apportioned had they been paid in the proper time and manner, and the monies so collected representing penalties on ad valorem tax, listing fees and publication costs shall be credited to the "reslale property fund" of such

county as hereinafter provided. In instances where vacant lots are offered for sale for both ad valorem taxes and special improvement taxes, but are sold for less than the total sum due, the county treasurer shall, after deducting the listing fees and publication costs, apportion the proceeds of such sale ratably between the ad valorem and special improvement tax accounts in the same ratio such proceeds bear to the total tax published as due for such resale.

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§ 3131. Return to be filed with county clerk – Deed – Time for setting aside deed – Purchaser to pay expenses of sale – Excess price, disposition

(a) Within thirty (30) days after such resale the county treasurer shall file in the office of the county clerk a return, and retain a copy thereof in his office, which shall show each tract or parcel of real estate so sold, the date upon which it was resold, the name of the purchaser and the price paid by him therefor, and also a copy of the notice of such resale with an affidavit of its publication or posting, and showing the complete minutes of sale, and that the same was adjourned from day to day until the sale was completed; and such notice and return shall be presumptive evidence of the regularity, legality and validity of all the official acts leading up to and constituting such resale. Within said thirty (30) days the county treasurer shall execute, acknowledge and deliver to the purchaser or his assigns, or to the board of county commissioners where such property has been bid off in the name of the county, a deed conveying the real estate

thus resold. The issuance of such deed shall effect the cancellation and setting aside of all delinquent taxes, assessments, penalties and costs previously assessed or existing against said real estate, and of all outstanding individual and county tax sale certificates, and shall vest in the grantee an absolute and perfect title in fee simple to said lands; and twelve (12) months after said deed shall have been filed for record in the county clerk's office, no action shall be commenced to avoid or set aside said deed. Provided, that persons under legal disability shall have one (1) year after removal of such disability within which to redeem said real estate.

(b) Any number of lots or tracts of land may be included in one deed, for which deed the county treasurer shall collect from the purchaser One Dollar ($1.00) for the first tract, and ten cents ($0.10) for each additional tract included therein. The county treasurer shall also charge and collect from the purchaser at such sale an amount in addition to the bid placed on such real estate, sufficient to pay all expenses incurred by said county in preparing, listing and advertising the lot or tract purchased by such bidder, which sums shall be credited and paid into the resale property fund hereinafter provided, to be used to defray to that extent the costs of resale.

(c) When any tract or lot of land sells for more than the taxes, penalties, interest and cost due thereon, the excess shall be held in a separate fund for the prior owner of such land to be withdrawn any time within two (2) years. At the end of two (2) years, if such money has not been withdrawn or collected from the county, it shall be credited to the county sinking fund.

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§ 3132. Form of resale tax deed

The resale tax deed shall be in substantially the following form:

Resale Deed

WHEREAS, _____, County Treasurer of _____ County, State of Oklahoma, on the ____ day of _____, 19___, sold separately and singly, in the manner provided by law, at tax resale and (here fill in the name of the purchaser, unless the land was bid in for the county, in which event, the name and official title of the County Treasurer should appear) bid in for (in this space should appear, if bid in for the county, "the County", if not bid in for the County, the name of the successful bidder) the real estate hereinafter described, and

WHEREAS, all proceedings, notices and duties provided, required and imposed by law prerequisite to the vesting of authority in said County Treasurer to execute this resale deed have been followed, given, complied with and performed, and

WHEREAS, the said _____, County Treasurer, is now by law vested with the power and authority to execute this resale deed,

NOW, THEREFORE, this indenture, made this ____ day of _____, 19___, between the State of Oklahoma, by _____, the County Treasurer of _____ County, of the first part, and (if purchased for the county, the Board of County Commissioners should appear here; if not, the name of the purchaser other than the county), of the second part, witnesseth, that the said party of the first

part for and in consideration of the premises and (here fill in the total sum paid, if purchased by one other than the county, or if purchased by the county, the following: "the cancellation of all the taxes, penalties, interest and costs heretofore levied and assessed against the real estate hereinbelow described"), hath granted, bargained and sold, and by these presents doth grant, bargin, sell and convey to the said party of the second part, his (or her) (here should appear such of the following words as are properly applicable: "heirs, successors, executors, administrators and assigns"), forever, the following separately described tracts, parcels, or lots of land so sold separately and singly for the (if sold to one other than the County, here insert "amount bid"; but if bid in the name of the county, insert "amount of taxes, interest, penalties and costs cancelled") in the total sum set opposite each, all of said tracts, parcels, or lots of land being located in _____ County, Oklahoma, to-wit:

Description	Amount $

(Here should appear a proper legal description of each tract, as sold, and opposite each, the amount of the bid, or the amount of the total taxes, interest, penalty and costs cancelled as to each and every such description) To have and to hold said tracts and parcels of land, with the appurtenances thereto belonging, to said party of the second part, his (or her) (here should appear such of the following words as are properly applicable: "heirs, successors, executors, administrators, and assigns") forever, in as full and ample manner as the said County Treasurer of said County is empowered by law to sell the same.

In testimony whereof, _____, County Treasurer of said County of _____, State of Oklahoma, has hereunto set his hand and seal the day and year aforesaid.

Attest:
(Seal)

State of Oklahoma
By _____
County Treasurer

State of Oklahoma)
) ss.
_____ County)

Before me, the undersigned, a Notary Public within and for the above named county and State, on this ____ day of _____, personally appeared _____, to me known to be the County Treasurer of _____ County, Oklahoma, and the identical person who executed the within and foregoing instrument and conveyance of land, and acknowledged to me that he executed the same in his capacity as County Treasurer of _____ County, Oklahoma, as his free and voluntary act and deed as such, and as the free and voluntary act and deed of _____ County, and the State of Oklahoma, for the uses and purposes therein set forth.

Witness my hand and notarial seal the day and year above written.

_____
Notary Public
(Or County Clerk)

My Commission Expires _____.

_____

§ 3133. Prima facie evidence, resale tax deed as

(a) A resale tax deed executed in substantial compliance with the provisions of the preceding section shall be prima facie evidence in all courts of the state, and in all suits and controversies relating to the rights of the grantee named in said deed, his heirs, successors or assigns, to the land thereby conveyed, of the following facts:

(1) That the real property deeded was subject to taxation for the year or years included in such sale;

(2) That the property had been legally assessed for such year;

(3) That the taxes were levied according to law;

(4) That the said property was legally sold to the county at delinquent tax sale more than two (2) years prior to said resale and that the lien acquired by the county at such sale remained in the county;

(5) That the property deeded had not been redeemed from sale at the date of the deed;

(6) That the property was legally sold at resale to the grantee named in said resale deed and was duly advertised before being sold;

(7) That all proceedings, notices and duties provided, required and imposed by law prerequisite to the vesting of authority in the county treasurer to execute such deed had been followed, given, complied with and performed.

(b) To defeat the deed it must be clearly pleaded and clearly proven that one or more of the essential prerequisites to the vesting of authority in said county treasurer to execute such deed was wholly omitted and not done; and a showing that one or more of said prerequisites was irregularly done shall not be sufficient to defeat the deed.

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§ 3134. Management of real estate purchased by county at resale

So long as the same remains unsold, the board of county commissioners shall manage the real estate purchased at resale in the name of the county; leasing, renting or using such property for the best interests of said county. The board is authorized to collect rents, enforce ejectments, and to make repairs or replacements on said real estate while the title remains in the county. Neglect of the board of county commissioners to acquire possession of such property shall constitute malfeasance in office and any county commissioner upon conviction thereof shall be removed from office.

§ 3135. Sale of property acquired at resale by county

Any property acquired by the county under the provisions of the resale tax laws may be sold by the county treasurer, after notice by publication, at such price as may be approved by the board of county commissioners, said notice to be given after receipt of bid on such property. Such notice shall be published by the county treasurer

once during each of the three (3) consecutive weeks preceding the sale, and if there be no paper published in the county, the county treasurer shall give notice by written or printed notice posted on the door of the courthouse. Such notice shall embrace a description of the property, the amount bid and the name of such bidder, and state that the sale of said property so listed shall be made at such price and to such bidder at a given date, beginning at an hour to be specified therein, subject to the approval of the board of county commissioners, unless higher bids are received at such sale. On the date stated in such notice, said property shall be sold by the county treasurer to the highest competitive bidder, for cash in hand, or to the original bidder if there be no higher price offered. The sale in any event shall be subject to the approval of the board of county commissioners in its discretion. The cost of said advertisement and other expense incident to said sale, as provided by law, shall be apportioned to the respective tracts listed in said sale and shall be added to the sale price of said real estate as a separate and additional charge and shall be paid by the purchaser, in addition to the amount bid upon said real estate. A deposit shall be required of any bidder before advertisement of such property to cover such advertisement and costs. Upon declaring the successful bidder at the sale, and before closing the sale, said bidder shall be required to make, or increase, his bid sufficient to cover cost of advertising and sale, and sufficient to cover the fees of the county clerk for the recording mandatorily required by law upon approval by the board of county commissioners, otherwise the sale shall continue. Upon approval of such sale as hereinbefore provided, the chairman of the

board of county commissioners shall execute a deed conveying title to the purchaser of such property in as full and ample manner as by law provided; such deed to be on a form prescribed by the State Auditor and Inspector.

RETURN OF SERVICE BY PROCESS SERVER

Trim #9603074

PERSONAL SERVICE

I Certify that I received the foregoing: summons on the 10th day of DEC, 1998, and that I received a copy of said summons with a copy of the petition attached to each of the following named defendants personally in Tulsa County at the address and on the date set both opposite each name, to wit

Name of Defendant

PROPERTY – GAVE TO CAROL JAMES OWNER OCCUPANT

Address

15720 E. 161st St. So Bixby

Date of Service

12/12/98 3:20 PM

* * *

SERVICE FEE: 35.00
MILEAGE FEE: ____
TOTAL FEE: 35.00

Process Server Tulsa County, Oklahoma
PSL #98-132

AFFIDAVIT

I, Deborah L. Barnett, the undersigned, do under oath, do say that I served this summons and made the return thereon, according to law that I am duly authorized to make this affidavit so help me God.

/s/ Deborah L. Barnett
Process Server

PSL #98-132

Subscribed to and sworn to before me Wayne D. Ford on this 13th day of Dec., 1998, Notary Public or Deputy Court Clerk.

RETURN OF SERVICE BY PROCESS SERVER

Trim #9603074

PERSONAL SERVICE

I Certify that I received the foregoing: summons on the 10th day of DEC, 1998, and that I received a copy of said summons with a copy of the petition attached to each of the following named defendants personally in Tulsa County at the address and on the date set both opposite each name, to wit

Name of Defendant

Carol James

Address

15720 E. 161st St. South Bixby

Date of Service

12/12/98 3:20 PM

* * *

SERVICE FEE: 35.00
MILEAGE FEE: ____
TOTAL FEE: 35.00

Process Server Tulsa County, Oklahoma
PSL #98-132

AFFIDAVIT

I, Deborah L. Barnett, the undersigned, do under oath, do say that I served this summons and made the return thereon, according to law that I am duly authorized to make this affidavit so help me God.

/s/ Deborah L. Barnett
Process Server

PSL #98-132

Subscribed to and sworn to before me Wayne D. Ford on this 13th day of Dec., 1998, Notary Public or Deputy Court Clerk.

NOTICE OF APPLICATION FOR TAX DEED

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

TO CAROL JAMES - OWNER/OCCUPANT 15720 E. 161st STREET SOUTH Bixby, OK 74008 and if dead, ANY unknown heirs, devisees executors, administrators, trustees, assigns and grantees, and all owners, tenants and persons owning or claiming any fight, title or interest of any nature or kind in and to the real estate herein described AS OWNERS, and to Nations Bank/Mortgage 9880 SOUTH Lewis TULSA, OK 74105 the person in possession of the hereafter described real estate.

You and each of you are hereby notified that the undersigned TIMOTHY DECKER is the owner and holder of a Tax Sale Certificate numbered 9603074 issued by the Treasurer of Tulsa County, State of Oklahoma, on and

covering the following described real estate, lands and tenements situate, lying and being in said County and State, to wit E 300 N 360 W/2 NW NE NE LESS N50 For RD SEC 27 17 14 2,135 ACS UNPLATTED

You and each of you are hereby notified that the above described land was, on the 7 day of October, 1996, after complete and legal notice had been given as provided by law, sold by the County Treasurer of Tulsa County for the taxes legally due thereon for the year 1993, 1995, which said taxes were not paid, and the said tract of land was bid in by Timothy Decker on Dec. 8, 1998 endorsed 1996, 1997. Now, therefore, unless redemption is made from said sale by you or your authorized agent or attorney on or before sixty days from service hereof, the undersigned Timothy Decker is the legal holder and owner of the certificate of purchase, will demand of the County Treasurer of Tulsa County, Oklahoma, that deed be issued to him for the above real estate as provided by law.

Dated this 9 day of December 1998.

/s/ Timothy Decker
Certificate Owner

MR#63039

COUNTY CLERK'S CERTIFICATE OF RETURNS FILED FOR ISSUANCE OF TAX DEED

TO THE COUNTY TREASURER

This is to state that TIMOTHY DECKER the owner(s) of Tax Sale Certificate numbered 9603074, issued on the 7th day of October, 1996, covering

E300 N360 W/2 NW NE NE LESS N50 FOR RD SEC 27 17 14 2.135ACS UNPLATTED has filed the following Affidavit(s) in the office of the County Clerk, stating service:

(SEE ATTACHED COPIES)

SERVICE BY PROCESS SERVER
(1) 12-11-98 Fee $ 30.00

(2) 12-12-98 Fee $ 35.00 EACH

_____ Fee $ ____

SERVICE BY SHERIFF
NONE Fee $ ____

_____ Fee $ ____

SERVICE BY CERTIFIED MAIL
NONE Fee $ ____

_____ Fee $ ____

SERVICE BY PUBLICATION
NONE Fee $ ____

(Date of first publication)

APPLICATION FILING FEE: $1.00

The Statute requires the fees for service of notice as above shown to be added to the amount necessary to redeem the above described land, lot or tract from sale,

and you are to make notation of same on your sale record.

Given under my hand and seal this 11th day of February 1999 at 11:10a.m.

JOAN HASTINGS, COUNTY CLERK

/s/ Mary Lou Mackin
Deputy

[SEAL]